IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14652 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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NILESHKUMAR MANSUKHLAL VYAS - Petitioner
Versus
UNION OF INDIA & 2 - Respondents

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Appearance :
MR HASIT H JOSHI for Petitioner
RULE SERVED for Respondent No.1
MR MUKESH A PATEL for Respondent No. 2
RULE NOT RECD BACK for Respondent No.3

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 15/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner was serving as TNC / PCC with respondent No.3. He was served with the charge-sheet on 26.09.1996. The charge was serious one. It was alleged in the charge-sheet, that he committed serious misconduct by getting an appointment in Railway as TNC by adopting corrupt practice by creating fake and bogus documents with the help of one Shri Arvind Chaturvedi, Senior Clerk, DRM Office, ET Section, BVP.

For the aforesaid charge, regular departmental inquiry was held against the petitioner. On completion of the inquiry, I.O. submitted detailed report on 19.07.1999 holding, that the charge leveled against the petitioner was proved. Relying on it, the Disciplinary Authority imposed penalty of removal from service by its order dated 29.11.1999. Against which he filed an appeal, which was dismissed by the Appellate Authority on 23.10.2001. Those orders of the removal and dismissal of appeal were challenged by the petitioner before the Central Administrative

Tribunal, Ahmedabad (for short, 'Tribunal') by way of filing O.A. 580 of 2002, which was dismissed by the learned Tribunal by its impugned judgment and order dated 07.05.2004, which is challenged in this petition.

Shri Joshi, learned advocate for the petitioner submitted that there was no evidence in this case to come to the conclusion that the petitioner was involved in getting appointment by producing fake and bogus documents in connivance with Shri Arvind Chaturvedi. In spite of it, the Disciplinary Authority relying on the report of the I.O. removed him from the service. There is no substance in this submission. There was ample evidence on record to show that the petitioner indulged himself in corrupt practice in creating appointment by producing fake and bogus documents. The learned Tribunal has also found in para 5 of its order that there was sufficient evidence. Hence, this contention of Mr.Joshi is rejected.

Mr.Joshi, learned advocate for the

petitioner, then submitted that in the instant case, the petitioner was not supplied with all the documents and statements of witnesses, which resulted into grave prejudice to the petitioner in defending his case properly before the Inquiry Officer. This argument was also advanced before the Tribunal and the learned Tribunal has rejected it on the ground that all the relevant documents were supplied to the petitioner. We are in complete agreement with the reasoning assigned by the Tribunal in its order. There is no question of non-observation of principles of natural justice in this case. Hence, this contention of Mr.Joshi is also rejected.

Mr.Joshi, learned advocate for the petitioner also submitted that in the instant case, no opportunity was extended to the petitioner to cross – examine the witness Shri D.M.Oza and relying on this evidence, the Inquiry Officer has come to the conclusion that the charge is proved. Therefore, inquiry and orders of removal vitiated. It is clear from the impugned order passed by the learned Tribunal that on 14.07.1999 when Shri D.M.Oza was

examined by the department, though offered for cross – examination, the petitioner – applicant refused to cross – examine him on the ground that his defence Counsel was not attending inquiry. If his defence Counsel fails to remain present during inquiry though informed and if the delinquent refuses to cross-examine the said witness in the inquiry, then no fault can be found with the Inquiry Officer in going ahead with the inquiry and relying on the evidence of Shri Oza, for coming to the conclusion that charge was proved.

The Appellate Authority in its order dated 23.10.2001 has observed :

> *"It is also noted that he had no cooperated during the inquiry. The findings of the inquiry had also been sent to you and you were also called for personal hearing in DOM's chamber. The Disciplinary Authority (DOM) had passed a detailed speaking order dated 26.11.1999 clearly mentioning that you did not avail of any of the several opportunities given to you so that you may substantiate your case that your appointment was not bogus.*
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> *During the personal hearing on 28.2.2001, I, also asked you to produce any document by which it can be seen that you had appeared in any test or examination conducted by RRB*

or any letter from the RRB showing that you had been selected as TNC. You had mentioned that no such papers were available with you. I also enquired whether you had satisfied with the enquiry. You mentioned that there was no bias on the part of Inquiry Officer as mentioned in your appeal dated 17.12.99."

This is sufficient for us to reject the contention of Shri Joshi, that evidence of Shri Oza ought not to have been relied on by the Inquiry Officer.

Mr.Joshi, learned advocate for the petitioner placed reliance on an unreported judgment dated 23.04.2004 delivered in Special Civil Application 1462 of 2004 and allied matters on the point that when the department failed to prove any role played by the delinquent for getting appointment by producing fake and bogus documents, then, he cannot be removed from the service. Firstly, we may state that it was a petition filed by the Union of India against the impugned judgment and order passed by the Central Administrative Tribunal, by which the order of removal passed against the railway employees were quashed and set aside. They were casual labourers between 1983 to 1987. The ground for

removal from service was totally different. Having gone through the said judgment, we fail to appreciate that how the said judgment will have any application on the facts of this case. In this case, the Disciplinary Authority came to the clear conclusion that charge for getting appointment by producing fake and bogus documents is proved. Therefore, Court would be slow in interfering with such order of removal more particularly, when the learned Tribunal after considering the entire evidence in the inquiry and going through the inquiry file, came to the conclusion that there was no violation of principles of natural justice as all the necessary and relevant documents were supplied to the petitioner and, that there was sufficient evidence to come to the conclusion that the petitioner had created fake and bogus documents for getting appointment.

Before parting, we must state that this petition is labeled as petition under Article 226 of the Constitution of India but strictly, speaking it is a petition under Article 227 of the Constitution of India, the scope of which is narrow and limited.

As held by the Hon'ble Supreme Court in the case of **Mohd. Yunus v/s. Mohd. Mustaqim reported in AIR 1984 SC 38,** High Court cannot interfere with the impugned order of the learned Tribunal, even if, a mistake is committed by the learned Tribunal either on the facts or on the law. In the instant case, no error either on the facts or on law much less jurisdictional error is committed by the Tribunal. Therefore, there is no question of interference with the order of the Tribunal in this case by this Court in its limited jurisdiction under Article 227 of the Constitution of India.

In view of the above discussion, this petition fails and is hereby dismissed. Rule is discharged. No costs.

[B.J.SHETHNA, J.]

[M.D.SHAH, J.]

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